



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 9, 1996

Mr. Paul W. Hunn
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Walsh, Anderson, Underwood,
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P.O. Box 2156
Austin, Texas 78768

OR96-0510

Dear Mr. Hunn:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 39092.

The Comal Independent School District (the "district") received an open records request for the attorney billing statements pertaining to the representation of the district in certain litigation over the approval of certain school bonds. You have submitted to this office as representative of the documents at issue three attorney billing statements.¹ You contend that the district may withhold the billing statements in their entirety pursuant to section 552.103 of the Government Code. In the alternative, you contend that the descriptions of legal services contained in the billing statements are protected by the attorney-client privilege.²

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated

¹In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

²You also argue that Rule 503 of the Texas Rules of Civil Procedure provides an "exemption" for all descriptions of tasks your law firm performed for the district. Please note, however, that discovery privileges do not serve as exceptions to disclosure under the Open Records Act. See Open Records Decision No. 575 (1990); see also Open Records Decision No. 416 (1984).

litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. Although you made no specific argument that the information at issue pertains to litigation that was pending or reasonably anticipated at the time you requested an open records decision, we believe that the records at issue demonstrate on their face that such is the case. We therefore will consider your section 552.103 claims.

In Open Records Decision No. 222 (1979), this office stated that the litigation exception does not apply where there is no showing of a direct relationship between the information sought and the pending or contemplated litigation. In this regard we note that you have not argued or otherwise demonstrated that the amounts charged for the legal services or the identity of the individuals performing those tasks "relate" to the legal issues in the litigation; similarly, you have not demonstrated how your firm's legal services pertaining to open records requests received by the district "relate" to the litigation. Consequently, these types of information may not be withheld from the requestor pursuant to section 552.103. However, we conclude that the remaining information describing the legal services performed relate to the litigation for purposes of section 552.103 and thus may be withheld at this time.³

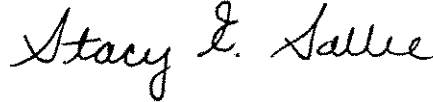
We now address the applicability of the attorney-client privilege to the remaining information contained in the billing statements. Although you raise the attorney-client privilege in the context of section 552.101 of the Government Code, this privilege is more properly deemed to be an aspect of section 552.107(1), which protects "that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Texas Rules of Civil Evidence, the Texas Rules of Criminal Evidence, or the Texas Disciplinary Rules of Professional Conduct." See Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* Accordingly, these two classes of information are the only information contained in the records at issue that may be withheld pursuant to the attorney-client privilege. See also Open Records Decision No. 589 (1991) (protected information in attorney billing statements) *overruling to extent of conflict* Open Records Decision No. 304 (1982).

Although the invoices submitted to this office contain notations that a privileged communication may have taken place, they do not reveal the substance of those communications. The portions of the billing statements that consist of references to services related to open records requests and to the billed hours and costs for the attorneys' services, do not appear to consist of the type of information section 552.107(1) was intended to protect and thus may not be withheld pursuant to the attorney-client privilege. See *id.* Consequently, the district may withhold only those portions of the billing statements coming within the protection of section 552.103 as discussed above.

³Once the litigation has concluded, however, section 552.103 will no longer apply to this information. See Open Records Decision Nos. 551 (1990), 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/RWP/ch

Ref.: ID# 39092

Enclosures: Submitted documents

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(w/o enclosures)